

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA )  
Plaintiff, )  
v. ) Civil Action No. 05-40008  
OVERLOOK MASONIC HEALTH )  
CENTER, INC., formerly named )  
Masonic Nursing Home, Inc., )  
Defendant. )

**MEMORANDUM IN SUPPORT OF  
MOTION TO ENTER CONSENT DECREE**

The plaintiff United States of America submits this memorandum in support of its motion to enter the Consent Decree filed on this date. For the reasons stated below, the Consent Decree is fair, reasonable, and consistent with the goals of the federal Clean Water Act, 33 U.S.C. §§ 1251 - 1387 (the "Act"), and therefore should be entered by the Court.

## BACKGROUND

The United States on this date has filed a Complaint against the defendant Overlook Masonic Health Center, Inc., formerly named Masonic Nursing Home, Inc. (collectively, "Masonic"), and simultaneously has filed a proposed Consent Decree that would resolve all allegations of the Complaint. The Complaint alleges that from before 1998 through October 2, 2003, Masonic operated a waste water treatment facility that treated sanitary sewage from Masonic's rest home and nursing facilities in Charlton,

Massachusetts, and discharged waste water to an unnamed tributary of the Quinebaug River. A joint state and federal discharge permit, issued to Masonic pursuant to Section 402 of the Act, 33 U.S.C. § 1342, imposed limitations on the discharge of various types of pollutants from the facility. The Complaint alleges that from at least 1998 through approximately October 2, 2003, Masonic violated Section 301 of the Clean Water Act, 33 U.S.C. § 1311, by regularly discharging pollutants, including biochemical oxygen demand, total suspended solids, pH, residual chlorine, fecal coliform, total phosphorus, total ammonia nitrogen, and pollutants causing acute and chronic toxicity, from the Masonic waste water treatment facility into the unnamed tributary of the Quinebaug River in excess of the effluent limitations in the permit. On or about October 2, 2003, Masonic ceased discharging waste water to the tributary of the Quinebaug River and commenced discharging its waste water to the Town of Charlton municipal sewer system.

The proposed Consent Decree would settle the government's claims by requiring Masonic to pay a civil penalty of \$162,500. In the Consent Decree the defendant certifies that its wastewater treatment facility has been rendered inoperable.

#### ARGUMENT

##### THE PROPOSED CONSENT DECREE IS FAIR, REASONABLE, AND CONSISTENT WITH THE GOALS OF THE CLEAN WATER ACT

In determining whether to enter a proposed consent decree, the function of the reviewing court is to satisfy itself that the consent decree is fair, reasonable, and faithful to the objectives of the governing statute. Durrett v. Housing Authority, 896 F.2d 600,

604 (1st Cir. 1990); FTC v. Standard Financial Management Corp., 830 F.2d 404, 408 (1st Cir. 1987); Culbreath v. Dukakis, 630 F.2d 15, 23 (1st Cir. 1980). While the court should not "mechanistically rubberstamp" the parties' proposal, where the settlement has been negotiated by one or more government agencies, the court should not review the merits of the decree *de novo*. United States v. Davis, 261 F.3d 1, 21 (1st Cir. 2001); United States v. Cannons Engineering Corp., 899 F.2d 79, 84 (1st Cir. 1990). In reviewing the validity of the proposed decree, "the district court must refrain from second-guessing the Executive Branch." United States v. Cannons Engineering Corp., 899 F.2d at 84.

The United States submits that the proposed Consent Decree in this case is fair, reasonable, and consistent with the goals of the Clean Water Act. The monetary penalty imposed by the decree serves to deter the defendant and other potential violators from violating the Clean Water Act in the future. There is no need to impose injunctive relief in this case because the defendant has ceased its discharges to the tributary of the Quinebaug River and has further certified, in page 2 of the Consent Decree, that its waste water treatment facility has been rendered inoperable.

CONCLUSION

For the foregoing reasons, the Court should enter the Consent Decree executed by the parties in this case.

Respectfully submitted,

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By:   
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January 14, 2005

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing document was served upon counsel for the defendant by mailing said copy, by first class mail, postage prepaid, to the following counsel for the defendant on this date, January 14, 2005:

Donald D. Cooper, Esq.  
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Assistant U.S. Attorney